

PROPOSED AMENDMENTS TO THE INITIALLY PROPOSED TEXT ARE INDICATED IN DOUBLE-UNDERLINE (==) AND DOUBLE-STRIKE-THROUGH (---) FORMAT.

CHAPTER 1. GENERAL
ARTICLE 5. INDIVIDUAL CASE DECISIONS

§ 2041. Review of Proposed Decisions.

SUBSECTIONS (a) THROUGH (i) REMAIN UNCHANGED

(j) Waiver of New Hearing. In cases where a new hearing is ordered, the prisoner or parolee is entitled to waive the right to the hearing and accept the modification suggested by the reviewing authority. In cases where the prisoner or parolee was represented by an attorney at the hearing, the prisoner shall be afforded 10 days to consult with counsel prior to the execution of the agreement to the proposed modification and the waiver of right to a hearing. ~~By accepting the modified decision, the prisoner or parolee will also acknowledge in writing the modified decision may not be appealed.~~

SUBSECTIONS (k) THROUGH (l) REMAIN UNCHANGED

Note: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 1170.2, 2964, 2966, 3041, 3042, 3060, 3063.5, 3063.6, 5075, and 5076.1, Penal Code; and Sections 6600-6601.3, Welfare and Institutions Code.

CHAPTER 1. GENERAL
ARTICLE 6. APPEALS

§ 2050. General.

~~—Any person under the board's jurisdiction may appeal any decision of the board which affects that person, except a decision to schedule a hearing or the denial of an appeal by the second level reviewers. The denial of a request for a subpoena or a subpoena duces tecum or the denial or granting of a request to quash a subpoena or subpoena duces tecum shall not be appealed until after the parole revocation or rescission hearing (Section 2682). An attorney may file an appeal on behalf of a prisoner or parolee if authorized by the prisoner or parolee. An appeal filed by an attorney shall include a signed authorization from the prisoner or parolee permitting the attorney to file the appeal on his behalf and an acknowledgment that the prisoner or parolee has received a copy of all documents filed with the first level reviewer.~~

~~—No regularly scheduled hearing shall be delayed pending the decision on an appeal. If a favorable decision on appeal may affect a regularly scheduled hearing every effort shall be made to process the appeal prior to the hearing.~~

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~~—The time limits specified in this article are directory only and may be extended if the chief deputy commissioner determines the extension is not likely to prejudice the prisoner or parolee.~~

Note: Authority cited: Section 5076.2, Penal Code. Reference: *In re Muszalski*, 52 Cal.App.3d 500 (1975); and Section 5076.1, Penal Code.

§ 2051. Grounds.

~~The sole general grounds for all appeals include:~~

- ~~(a) The decision was based on incorrect or incomplete information which, if correct or complete, might have resulted in a different decision.~~
- ~~(b) An error of judgment led to a decision which is unreasonable in view of the facts.~~
- ~~(c) The board did not have the legal authority to make the decision.~~
- ~~(d) The decision violates the Board Rules.~~

Note: Authority cited: Section 5076.2, Penal Code. Reference: *In re Muszalski* (1975) 52 Cal.App.3d 500; and Section 5076.1, Penal Code.

§ 2052. Filing an Appeal.

~~The prisoner or parolee has the following responsibility in filing any appeal:~~

- ~~(a) Contents of the Appeal.~~
- ~~(1) The appeal shall include the name, Department (CDC) number, and location of the prisoner or parolee.~~
- ~~(2) The appeal shall be brief, pertinent, legible, and clearly written.~~
- ~~(3) Specific grounds must be stated and all necessary documents and information must be attached to the application.~~
- ~~(4) All grounds must be included in the same appeal, except for appeals alleging a failure to provide a reasonable accommodation pursuant to § 2057. The submission of an appeal alleging a failure to provide a reasonable accommodation shall not bar the submission of a subsequent appeal on grounds other than a failure to provide a reasonable accommodation.~~
- ~~(5) The decision desired must be stated.~~
- ~~(6) The application (grounds for appeal, the decision desired, and all arguments in support of the appeal) shall not exceed either the front side of six pages or the front and back sides of three pages of 8 and 1/2 by 11 inch paper.~~
- ~~(b) Assistance. Assistance in preparing the appeal may be sought from staff or others.~~

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~~(c) Submitting the Appeal. The appeal shall be submitted to the department appeals coordinator, classification and parole representative, or parole appeals coordinator within 90 days of receipt of written confirmation of the decision.~~

Note: Authority cited: Section 5076.2, Penal Code. Reference: *In re Muszalski* (1975) 52 Cal.App.3d 500; and Section 5076.1, Penal Code.

§ 2054. Board Appeals Unit.

~~(a) Decisions. The Board Appeals Unit may make the following decisions:~~

~~(1) Order a New Hearing. Place the matter directly on the appropriate calendar if an error or omission of consequence is confirmed, an error of judgment occurred, or the decision was not legally authorized. Reasons for this action shall be stated. When possible none of the persons who made the decision being appealed shall be on the new hearing panel. The new hearing should be held within 60 days of the Board Appeal Unit's decision. The department appeals coordinator shall report delay beyond 60 days to the Board Appeals Unit with the reasons for the delay. If a new hearing is ordered following rescission or postponement, the new hearing should be held before the parole date that was postponed or rescinded, if possible. Following a new hearing, a copy of the new decision shall be forwarded to the Board Appeals Unit.~~

~~(2) Deny. Deny the appeal if the decision is within established board policy, any factual error was harmless or the decision was reasonable under the circumstances of the case. The decision shall document the reasons for denial and include specific citation of policy. Any factual error discovered must be corrected even if it is minor (insufficient to warrant a different decision) and the appeal is denied.~~

~~(3) New Decision. Make a new decision if no new hearing is required and the decision will not adversely affect the prisoner or parolee.~~

~~(4) Dismiss. Dismiss the appeal if it should be handled through the Department of Corrections' Inmate and Parolee Appeals System (See Title 15, Division 3, Chapter 1, Article 8, California Code of Regulations), if the board has no jurisdiction over the issues being appealed, if the appeal is premature, or if the appeal was filed more than 90 days after the prisoner or parolee received written confirmation of the decision.~~

~~(b) Time Limits. A complete appeal meeting the requirements of s 2052 shall be decided within the following time frames after receipt by the Board Appeals Unit:~~

~~(1) Parole revocation and revocation extension appeals shall be decided within 90 days.~~

~~(2) Appeals alleging a failure to provide a reasonable accommodation pursuant to s 2057 shall be decided within 30 days.~~

~~(3) All other appeals shall be decided within 120 days.~~

~~(4) Exceptions to these time frames are authorized in the event of:~~

~~(A) Complexity of the decision, action, or policy.~~

~~(B) Necessary involvement of other agencies or jurisdictions.~~

~~(C) Expedited appeals as provided in s 2056.~~

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~~(D) Written notice shall be given to the prisoner before exceeding the general time limits. The notice shall include the reasons and estimated completion time.~~

~~(c) Exhaustion of Administrative Remedies. Administrative remedies with the Board are exhausted after the prisoner or parolee has filed an appeal as specified in § 2052 and the above time limits have elapsed.~~

Note: Authority cited: Section 5076.2, Penal Code. Reference: Section 5076.1, Penal Code; and *In re Muzalski* (1975) 52 Cal.App.3d 500.

§ 2055. Attorney Determination Appeals.

~~—If the department denies a prisoner's or parolee's request for an attorney, the prisoner or parolee may request board review of that decision. If the prisoner or parolee requests review, appropriate department staff shall telephone the Board Appeals Unit for a decision concerning an attorney.~~

Note: Authority cited: Section 5076.2, Penal Code. Reference: *In re Muzalski*, 52 Cal.App.3d 500 (1975).

§ 2056. Expedited Appeals.

~~—(a) General. A prisoner, parolee or attorney may request that an appeal be expedited when the outcome of the appeal may substantially affect a pending decision by an administrative or judicial agency or when there is a specific need for an immediate decision.~~

~~—(b) Filing. The prisoner, parolee or attorney shall file the appeal including documentation of the reasons for requesting an immediate decision with the Board Appeals Coordinator.~~

~~—(c) Board Appeals Coordinator. The Board Appeals Coordinator shall determine whether there is a need for an immediate decision. If the Appeals Coordinator determines the appeal does not require an immediate decision, the Board Appeals Coordinator shall handle the appeal as provided in 2054. If the Appeals Coordinator determines the appeal should be expedited, the appeal should be processed as soon as possible.~~

Note: Authority cited: Section 5076.2, Penal Code. Reference: *In re Muszalski*, 52 Cal. App.3d 500 (1975).

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§ 2057 2251.5 Americans with Disabilities Act ~~Disabled Persons.~~

(a) No qualified individual with a disability as defined in 42 United States Code (U.S.C.) section 12102 shall, by reason of such disability, be excluded from participation in, or be denied the benefits of, the services, programs or activities of the ~~B~~board, or be subject to discrimination by the ~~B~~board.

(b) Any prisoner or parolee who believes that he~~/~~ or she is an individual with a qualifying disability, and believes that he~~/~~ or she has been denied reasonable accommodation ~~at a~~ by the ~~B~~board hearing, may ~~appeal~~ grieve that denial the decision ~~through procedures set forth in Article 6, sections 2050 through 2056 in accordance with the process required by the *Armstrong v. Schwarzenegger* Revised Permanent Injunction.~~

Note: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: *Pennsylvania Department of Corrections v. Yeskey* (1998) 118 S.Ct. 1952, *Armstrong v. Schwarzenegger* (2002) USDC-ND (No. C-94-2307-CW); Title II, Americans with Disabilities Act of 1990 (ADA), 104 Stat. 328, 42 U.S.C. sections 12101, et seq.

§ 2251.6. Filing a Grievance.

The prisoner or parolee has the following responsibility in filing any grievance:

(a) Contents of the Grievance.

(1) The grievance shall include the name, department (CDC) number, and location of the prisoner or parolee.

(2) The grievance shall be brief, pertinent, legible, and clearly written.

(3) Specific grounds, relating to Americans with Disabilities Act issues only, must be clearly stated and all necessary documents and information must be attached to the application.

(4) All grounds must be included in the same grievance.

(5) The decision desired must be stated.

(6) The application (grounds for grievance, the decision desired, and all arguments in support of the grievance) shall not exceed either the front side of six pages or the front and back sides of three pages of 8 and 1/2 by 11 inch paper. A BPT Form 1074 (Request for Reasonable Accommodation – Grievance Process) may be used, but is not required.

(b) Assistance. Assistance in preparing the grievance may be sought from staff, attorneys assigned for revocation hearings, or others. The BPT Form 1074 shall be available to prisoners and parolees in custody and also at parole offices.

(c) Submitting the Grievance. Grievances shall be submitted as soon as possible to the board ADA Coordinator (pre-hearing) or the board Quality Control Unit (post-hearing), or given to a staff person or attorney.

Note: Authority cited: Section 5075.2. Reference: *Armstrong v. Schwarzenegger* (2002) USDC-ND (No. C-94-2307-CW); Title II, Americans with Disabilities Act of 1990 (ADA), 104 Stat. 328, 42 U.S.C. Sections 12101, et seq; and Section 5076.1, Penal Code.

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§ 2251.7. Processing a Grievance.

(a) Timeframes. The board Americans with Disabilities Act Compliance Unit shall ensure that a complete grievance meeting the requirements of § 2251 be answered within 30 calendar days of receipt by the board's Quality Control Unit.

(b) Board Actions. The board may take any of the following actions when answering a grievance.

(1) Order a New Hearing. Place the matter directly on the appropriate calendar if the denial of the requested accommodation violated the prisoner or parolee's due process or disability rights to access the parole proceeding [as that term is defined in the Armstrong Remedial Plan II]. Reasons for this action shall be stated. Following a new hearing, a copy of the new decision shall be forwarded to the board's Quality Control Unit.

(2) Deny. Deny the grievance if the decision denying the accommodation was harmless or the decision was reasonable under the circumstances of the case. The decision shall document the reasons for denial and include specific citation of policy.

(3) New Decision. Make a new decision if no new hearing is required and the decision will not adversely affect the prisoner or parolee.

(4) Dismiss. Dismiss the grievance if it should be handled through the Department of Corrections' Inmate and Parolee Appeals System (See Title 15, Division 3, California Code of Regulations), if the board has no jurisdiction over the issues being grieved, if the grievance is premature, or if the grievance was filed more than 90 days after the prisoner or parolee received written confirmation of the decision denying the accommodation.

(c) Exhaustion of Administrative Remedies. Administrative remedies with the Board are exhausted after the prisoner or parolee has filed an grievance as specified in § 2251.5 et seq. and the above time limits have elapsed.

Note: Authority cited: Section 5075.2. Reference: *Armstrong v. Schwarzenegger* (2002) USDC-ND (No. C-94-2307-CW); Title II, Americans with Disabilities Act of 1990 (ADA), 104 Stat. 328, 42 U.S.C. Sections 12101, et seq; and Section 5076.1, Penal Code.

CHAPTER 1. GENERAL
ARTICLE 7. MULTIJURISDICTION REGULATIONS

§ 2072. Determination of Multijurisdiction Status.

(a) General. For the purpose of determining whether the multijurisdiction rules apply to any prisoner or parolee, the determinative factor shall be the individual's custody or parole status as of the date any board action is taken, or the date of the assertion of a right.

(b) Definitions.

(1) Examples of "board actions" are:

(A) The scheduling of a hearing.

(B) Notification of a hearing or board decision.

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- (C) A hearing.
- (D) A decision made without a hearing.
- (2) Examples of "assertion of a right" are:
 - (A) An attorney request.
 - (B) A central file review request.
 - ~~(C) An appeal.~~
 - (D) A hearing request.
 - (E) A rehearing request.

The multijurisdiction rules shall apply to any prisoner or parolee who becomes a multijurisdiction prisoner or parolee subsequent to any board action or to the assertion of any right. The multijurisdiction regulations shall no longer apply to a prisoner or parolee if the prisoner's or parolee's multijurisdiction status terminates subsequent to any board action or to the assertion of any right.

Note: Authority cited: Section 5076.2, Penal Code. Reference. Sections 11189(f) and 11190(f), Penal Code.

§ 2073. Appeals Grievances for Multijurisdiction Prisoners and Parolees: General.

Any multijurisdiction prisoner or multijurisdiction parolee who is dissatisfied with a decision by the Board regarding accommodation for a disability as defined in 42 U.S.C. section 12102 may grieve that decision in accordance with the process required by the *Armstrong v. Schwarzenegger* Revised Permanent Injunction. The prisoner or parolee may request help from a departmental or board employee or other party in filing the grievance, and a decision shall be provided prior to the hearing, if the grievance is received at least five working days before the scheduled hearing. ~~may appeal any decision of the board which affects him or her, except a decision to order a hearing scheduled or a decision to deny an appeal. Such appeals shall be submitted, reviewed and decided upon as provided in Sections 2050-2056 except as modified in this article. Decisions and procedures of the corrections and parole authorities of incarcerating jurisdictions must be appealed according to the procedures of such jurisdictions, unless any procedures were employed at the request of the board or any decisions form the basis of any board action.~~

Note: Authority cited: Section 5076.2, Penal Code. Reference: *In re Muszalski*, 52 Cal.App.3d 500 (1975); *Armstrong v. Schwarzenegger* (2002), USDC-ND (No. C-094-2307-CW); Title II, Americans with Disabilities Act of 1990 (ADA), 104 Stat. 328, 42 U.S.C. sections 12101, et seq.

§2074. Appeals Grievance Coordinator.

(a) Multijurisdiction Prisoner. The grievance ~~appeals~~ coordinator for multijurisdiction prisoners shall be:

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(1) Federal compact, federal concurrent, federal consecutive prisoners; concurrent, consecutive, WICC, and ICC prisoners: A Classification Staff Representative of the Interstate Unit.

(2) Out-to-Court and California Agency Prisoners: The Classification and Parole Representative in the department institution designated by the department to maintain the prisoner's central file.

(b) Incarcerated Multijurisdiction Parolees. The grievance ~~appeals~~ coordinator for multijurisdiction parolees incarcerated in a penal institution shall be:

(1) Multijurisdiction parolees incarcerated in a department institution: The Classification and Parole Representative (C&PR).

(2) Multijurisdiction parolees located in California: A Classification Staff Representative of the Interstate Unit.

(3) Multijurisdiction parolees located outside the State of California: A Classification Staff Representative of the Interstate Unit.

(c) Non-incarcerated Multijurisdiction Parolees. The grievance ~~appeals~~ coordinator for parolees not incarcerated in a penal institution shall be:

(1) Concurrent parolees and cooperative parolees: A Parole Agent III or higher of the Interstate Unit.

(2) California concurrent parolees: A Parole Agent III or higher in the parolee's supervision region.

(3) California Agency parolees: A Parole Agent III or higher in the parolee's supervision region.

Note: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1170(f), 1170.2, 3041, 3060, 11189(f) and 11190(f), Penal Code; Armstrong v. Schwarzenegger (2002), USDC-ND (No. C-094-2307-CW; Title II, Americans with Disabilities Act of 1990 (ADA), 104 Stat. 328, 42 U.S.C. sections 12101, et seq.

CHAPTER 6. PAROLE REVOCATION
ARTICLE 6. ATTORNEY DETERMINATIONS

§ 2701. Appeals.

~~—Appeals of denials of attorneys should be handled immediately by telephone to the second level of appeal. (See § 2055.)~~